UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

ADT, LLC d/b/a ADT SECURITY SERVICES

and

Cases 3-CA-184936
3-CA-192545

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION 43

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DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Albany, New York on June 13, 2017. Based on timely filed charges by the International Brotherhood of Electrical Workers, Local Union 43 (Union or Charging Party), the General Counsel issued a complaint alleging that ADT, LLC d/b/a ADT Security Services (ADT or the Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act)[1] by failing and refusing to bargain collectively and in good faith with the Union in several respects. The dispute revolves around the Respondent's implementation on September 22, 2016 of a mandatory biweekly six-day workweek for all service technicians in its Syracuse office and a mandatory six-day workweek for all service and installation technicians in its Albany office without affording the Union an opportunity to bargain over such changes.[2] An additional issue arose when the Respondent allegedly bypassed the Union and dealt directly with an Albany office employee in granting him an exception from the new scheduling policy. Finally, it is alleged that the Respondent unreasonably delayed in fully responding to information requested by the Union relevant to the six-day workweek scheduling change.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

[1] 29 U.S.C. §§ 151-169.
[2] All dates are 2016 unless otherwise indicated.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with offices and places of business in Albany and Syracuse, New York, has been engaged in the installation and services of residential and commercial security systems. In conducting such business operations, the Respondent annually derives gross revenues in excess of $500,000 from the sale and retail alarm systems, and purchases and receives at said facilities goods valued in excess of $5,000 directly from points outside the State of New York. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Respondent's Operations

The Respondent was purchased by the Apollo Group in 2016. Subsequently, the Apollo Group merged the Respondent with another subsidiary, Protection One. As part of the consolidation, the Apollo Group decided to apply Protection One's customer retention policy of responding to 75% of service calls within 24 hours (the In Standard policy) to the Respondent on a nationwide basis.

During the period of time at issue, the following individuals were employed by the Respondent as supervisors within the meaning of Section 2(11) of the Act and as its agents within the meaning of Section 2(13) of the Act: Peter Bernard – Manager; Michael Kirk – Area General Manager; Michael Stewart – Regional HR Manager.

Prior to September, employees worked standard 8 a.m. to 4:30 p.m. shifts, five days per week, 40 hours total. The Respondent occasionally requested employees to work overtime beyond the end of their regular shifts or on regular days off, but did so in order of seniority. If necessary, all employees could be required to work overtime. However, backlogs were usually handled by a manager calling Patrick Costello, the Union's president and assistant business manager, and asking for volunteers. Costello would then call employees and offer the overtime opportunities based on seniority.

B. The Collective Bargaining Agreements

As of September 2016, there were 3 technicians employees by the Respondent's Albany office. They comprised the Albany Unit, which constituted the following unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees originally described in the certification dated November 20, 1968 (Case Number 3-RC-4533) classified by the Respondent as residential and small business installers, residential and small business high volume commissioned installers, residential and small business

> service technicians, employed by the Respondent at its facility in Albany, NY; but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors, as defined in the Act; and excluding all commercial installers and commercial service unless the employees are employed by the Respondent and are located at, or are directly supervised by the Respondent's supervisors located at its Albany, NY facility.

As of September 2016, there were 12 technicians employed by the Respondent's Syracuse office. They comprised the Syracuse Unit, which constituted the following unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees originally described in the certification dated November 20, 1968 (Case Number 3-RC-4533) classified by the Respondent as residential and small business installers, residential and small business high volume commissioned installers, residential and small business technicians, employed by the Respondent at its facility in Syracuse, NY, but excluding all alarm service investigators, relief supervisors, all office clerical employees and professional employees, guards and supervisors, as defined by the Act; and excluding all commercial installers and commercial service unless the employees are employed by the Respondent and are located at, or are directly supervised by the Respondent's supervisors located at, its Syracuse, NY facility.

The Respondent has recognized the Union as the exclusive collective-bargaining representative of the Syracuse and Albany Units as reflected in successive collective-bargaining agreements (CBA), the most recent of which are effective from June 11, 2016 to June 10, 2019 as to the Syracuse Unit, and June 11, 2015 to June 10, 2018 with respect to the Albany Unit.[3]

The disputed scheduling provisions are set forth in identical versions of Article 6 in the Syracuse and Albany CBAs. In pertinent part, the identical provisions establish a 40 hour employee workweek and 8 hour workday. The workweek is deemed to start on Wednesday and end on Tuesday, the same as the payroll week. Section 1 further defines the regular workweek as follows:

> The normal work schedule for the Service Department shall be a shift of eight and one-half hours with a thirty-minute lunch period comprising of five consecutive days, Monday through Saturday between the hours of 8:00 a.m. and 12:00 midnight. There will also be a four-day workweek comprised of ten and one half hour shifts, with a thirty-minute lunch period, between the hours of 8:00 a.m. and 12 midnight, Monday through Friday. Customer needs may periodically make it necessary for work to be performed beginning at 7:00 a.m. The Company will first seek qualified volunteers to perform such work. If there are no qualified volunteers then the least senior qualified person will be assigned to perform the work. Second shift will be defined as those shifts beginning at 12:00 noon and after. Advance notice of schedule changes will be given whenever

[3] Joint Exh. 2-3.

possible, except in cases of emergency, such schedules shall be established one week in advance.

The Installation Department may be scheduled for any eight-hour period between 7:00 a.m. and 5:30 p.m. in any given day between Monday and Friday. Customer needs may periodically make it necessary for work to be performed on a second shift and/or Saturdays. The Company will first seek qualified volunteers to perform such work. If there are no qualified volunteers then the least senior qualified person will be assigned to perform the work. Such second shifts will occur between the hours of 7:00 a.m. and 12:00 midnight. Except in cases of emergency, such schedules shall be established one week in advance. Second shift will be defined as those shifts beginning at 12:00 noon and after.

Section 2 provides the Respondent with additional authorization regarding assignments outside of the regular schedule:

In accordance with Section 1 of this article, the Employer will establish 12:00 noon to 8:30 p.m. for trouble and maintenance requirements. Volunteers among qualified personnel will be solicited. If no qualified volunteers exist, assignment will be based on reversed seniority among qualified personnel. Assignment (or volunteer) will be for a minimum of six (6) months. The Employer reserves all rights under Section 1 of this article.

Sections 3 and 4 provide for the assignment and compensation of overtime and emergency overtime work, respectively:

All time worked daily in excess of eight (8) hours in a scheduled 5 x 8 hour workweek, in excess of ten (10) hours in a 4 x 10 hour workweek, or weekly in excess of forty (40) hours, or on scheduled days off shall be compensated for at one and one-half (1½) times the employee's regular straight time hourly rate. No time worked except for work performed on paid holidays, as hereinafter, listed in Article 8, shall under any circumstances be compensated for at more than one and [one-half] (1½) times the straight time hourly rate. There shall be no compounding, duplicating or pyramiding of overtime payments of any description. In any cases when an employee is not able to complete an assigned job during scheduled work hours he will notify his Supervisor by 1:30 p.m. of that day. At such point a decision shall be made as to when the job will be completed if the job was scheduled to be completed that day.

Emergency overtime calls from home shall be compensated at one and one-half (1½) times the employee's regular hourly rate of pay from the time the employee leaves his home to the time reasonably required for him to return home. Employees on-call will receive at least three (3) hours at overtime rate each time they are notified, 3respond to a call and return home. If they are sent on another call before returning home, the time is added. (Example: Employee is called out, responds to the site and fixes the problem within two (2) hours. He receives a minimum of three (3) hours pay at the overtime rate. If he is beeped prior to returning home and responds to another call for an additional hour

he would be paid three (3) hours minimum for the first call and one (1) hour for the second call. Total call out pay is four (4) hours overtime.)

C. The Six-Day Day Workweek

The mandatory nationwide six day work week was prompted by ADT's acquisition by Apollo and ADT's subsequent merger with Protection 1 on September 1. Based on Protection 1's superior customer retention rate, Apollo instructed ADT to adopt Protection 1's policy requiring that 75% of service calls be responded to within 24 hours. Under that directive, the mandatory overtime was applicable to all employees. There was no limitation on ADT's ability to schedule work 7 days a week for 8 hours each day. The only exceptions were for those attending school classes paid for by ADT.[4]

On September 6, Kirk communicated the rollout of the ADT integration with Protection 1 in an email to ADT managers and supervisors:

> Team,
> With the integration of ADT and Protection 1 we have been given new customer service targets of 1.69 days on all new installations and service tickets created. This equates to being able to deliver, 24 hour customer service to our new and existing customers 75% of the time which is a great objective to meet, while understanding that 25% of our customers may not be able to be available within 24 hours. While I understand that each market is different, and we need to approach each market as a separate entity and make decisions that are based solely on each location. Until we meet the present target, we will be implanting a mandatory six day workweek in the following markets beginning on Thursday, September 22nd and will continue until each market achieves the desired target which the manager will post locally for each market. I understand that this is a burden on some of our technicians and the only exception at this time are those technicians that are currently attending classes and are enrolled in higher education.
>
> Allentown Pa
> Wilkes-Barre Pa
> Bridgeville Pa
> Albany NY
>
> The following districts will implement a mandatory 6 Day workweek on Thursday, September 22 2016 for the second and fourth week of every month until the target is achieved and can change to weekly if needed with no additional notice.
>
> Syracuse NY
> Buffalo NY
> Erie Pa

[4] James Nixdorf, ADT's director of labor relations, oversee the processing of disciplinary matters and CBAs. He testified about the changes, but professed little knowledge about the actual rollout.

> Altoona Pa
> Lancaster Pa
>
> I appreciate your understanding and dedication to providing faster service to our customer and I truly appreciate your support, I am providing a two week notice to all technicians as I truly believe that this is the right thing to do! Please keep in constant communication with your manager and myself if you are confused as to why this critical initiative is important and why we need your immediate assistance and to see where we are to the target. Thank you for all that you do and keep those great customer service emails coming to me from your customers as I love to recognize great individual performances . . . You guys and girls are awesome. Thank you.

Kirk followed up one minute later with another email directing the "Team" to "get this in the hands of every technician no later than 9:00 AM tomorrow morning."[5] His email was forwarded to the technicians on September 7. Additionally, Stewart, the Respondent's regional human resources manager, forwarded the email to Costello, the Union's representative. During the conversation that followed, Costello asserted that the change violated the CBA and requested it be rescinded immediately. Stewart agreed to pass along Costello's view to the Respondent's hierarchy, but doubted that the change would be rescinded.[6]

In the Albany location, the six-day schedule was implemented during the week of September 22 and lasted until December or January 2017. In the Syracuse location, the bi-weekly six-day workweek occurred over the course of nearly a month. During that time, Albany unit employees worked Saturdays in addition to their regular Monday through Friday schedules, while Syracuse unit employees worked their off day. Based on Article 6 of the Syracuse CBA, Albany and Syracuse Unit employees received 1 ½ times regular compensation for working on their regular days off.

In Albany, David Madsen, an installation technician in the Albany branch, served as the Union's shop steward and reported to Costello. He worked the six-days per week schedule for at least six Saturdays until December or January 2017. At the time, two technicians were out or going out on medical leave, which left Madsen and another employee as the only technicians available to work on Saturdays. As it turned out, Madsen was the only technician to work on Saturdays. He did not, however, file a grievance over the directive.

D. The Information Request

On September 19, prior to the scheduling change, Costello wrote to Stewart protesting ADT's unilateral decision to implement a six-day workweek schedule:

> As I previously explained, Article 6 of the CBA explicitly and unambiguously provides for only four or five-day workweeks. At no point does the CBA authorize a six-day workweek or allow ADT to change the agreed-upon schedule.

[5] Joint Exh. 1.

[6] Costello's credible testimony was not refuted. (Joint Exh. 4; Tr. 25.)

The letter further demanded ADT rescind the directive, and asserted that the failure to bargain over the change constituted an unfair labor practice. The letter further requested the production by October 7 of a broad range of information relating to the decision-making, planning and implementation of the scheduling change.[7]

On October 6, Stewart responded to Costello that ADT was putting together a response to the September 19 information request and expected to provide it by October 14. Costello did not object to the revised production date but requested that Stewart immediately provide all of the responsive information in his possession.[8]

On October 13, Stewart replied to Costello by email. Stewart noted at the outset that ADT considered several of the requests vague, ambiguous or non-relevant. Stewart then explained the purpose of the six-day workweek as a measure to reduce a backlog of open work orders so the offices would be compliant with the company metric for customer service. To do so, each location was required to respond to customer's requests within 24 hours, 75% of the time. Stewart noted this was a standard also used by Protection-1 before the merger. Stewart attached a data set to the email, showing the backlog of open work orders in the Albany and Syracuse locations and also the reductions achieved. He declined, however, to provide information regarding ADT's interactions with other unions, claiming the information was not relevant. He did not provide further explanation or an answer to other questions as set out in the September 19th email.[9]

On October 24, Costello responded to Stewart's email of October 13. He explained that Stewart's response was insufficient, and restated his argument as to why the requested information was relevant. Not having received a response to his October 24 information requests, Costello followed up with another letter and email to Stewart on November 18. He warned that if the information was not received by November 22 he would file an unfair labor practice charge.[10]

On December 15, Costello asked Stewart to send him "all the responses that you have generated concerning our most recent information requests."[11] Stewart responded on December 16 by providing a "Talking Points" memorandum given to all installation and service team managers.[12] Costello did not understand all of the information contained on the spread sheets.

E. Direct Dealing

Michael Sopok, a technician in the ADT's Albany branch, learned of ADT's six-day workweek directive along with the rest of the workforce on September 22. On that day, he told shop steward Madsen that he had a problem working on Saturdays because of his childcare situation, but did not ask him to approach management. Sopok then called Peter Bernard, the installation team manager, about his dilemma.[13] Bernard forwarded Sopok's request to Kirk.

[7] Joint Exh. 5.
[8] Joint Exh. 6.
[9] Joint Exh. 7
[10] Joint Exh. 10-13.
[11] Joint Exh. 14.
[12] Joint Exh. 15.
[13] It is not disputed that as a shop steward, Madsen did not have the authority to bargain with ADT.

Kirk asked that Sopok provide documentation relating to the childcare issue, which Sopok did. Kirk approved Sopok's request through Bernard. As a result, Sopok did not have to work the mandatory Saturday shift and was removed from the six-day workweek schedule. However, a few weeks after submitting his request, Sopok's exemption was conditioned on an extended five-day workweek, with up to 12 hours per day. As a result, he resigned.

LEGAL ANALYSIS

I. UNILATERAL CHANGE TO A SIX-DAY WORKWEEK IN THE ALBANY AND SYRACUSE UNITS

The complaint alleges that the Respondent violated Section 8(a)(5) of the Act on September 22 by imposing a mandatory six-day workweek for unit employees in the Albany Unit. Further, the Respondent is alleged to have violated the act by unilaterally imposing a bi-weekly six-day workweek on employees in the Syracuse Unit. The Respondent denies the allegations, claiming the issue is not a unilateral change, but rather a dispute between the Respondent and the Union over an interpretation of the contract. In support of their interpretation, the Respondent relies on the argument that Syracuse and Albany Units have always permitted management to schedule work on regular days off, schedule mandatory overtime and require employees to work past the end of their shifts.

An employer violates Section 8(a)(5) and (1) of the Act if it makes material unilateral changes during the course of a collective-bargaining relationship on matters that are mandatory subjects of bargaining, "for … a circumvention of the duty to negotiate … frustrates the objectives of Section 8(a)(5) much as does a flat refusal." *NLRB v. Katz,* 369 U.S. 736, 743,747 (1962); *United Cerebral Palsy of New York City*, 347 NLRB 603, 606 (2006).Items falling within the language of Section 8(d) are mandatory subjects of bargaining. *NLRB v. Borg-Warner Corp.*, 356 U.S. 342, 349 (1958). The Board has also held that "in order for a statutory bargaining obligation to arise with respect to a particular change unilaterally implemented by an employer, such change must be a 'material, substantial, and a significant' one affecting the terms and conditions of employment of bargaining unit employees." *Angelica Healthcare Services Group*, 284 NLRB 844, 853 (1987).

The work schedules of ADT's unit employees were vital aspects of working conditions and are mandatory subjects of bargaining. *See Meat Cutters, Local 189 v. Jewel Tea Co.,* 381 U.S. 676, 691 (1965); *Bloomfield Health Care Center*, 352 NLRB 252, 256 (2008). Moreover, the Board has long held changes similar to ADT's unilateral changes in a six-day day workweek as material and significant. In *Fall River Savings Bank*, the employer unilaterally changed scheduled work from a five day work week to a six day work week based on the rationale that the revision was a reasonable variation of past practices involving flexible work on Saturdays. The Board disagreed, finding that the change in working conditions amounted to a conversion from voluntary to mandatory overtime. 260 NLRB 911(1982).

Similarly, in *Intracoastal Terminal, Inc.*, the Board held that changing a Monday through Friday work week to Wednesday through Sunday was unlawful. The Board rejected the argument that changes in work schedules were insubstantial, even though they roughly amounted to the same number of hours the employees had worked under the previous schedule. The Board noted that it was axiomatic that "regular and overtime hours of work are vital aspects of working

conditions" to be discussed with a bargaining units representative. 125 NLRB 359, 359-360, 367-368 (1959), enf. denied in relevant part on other grounds 286 F.2d 954 (5th Cir. 1961).

Nor is the impact of the change any less significant because it affected only a few members of the unit. See *Bloomfield Healthcare Center,* supra at 252 (unilateral change made to bargaining unit's schedule was significant even though it only affected a few members of the unit); *Georgia Power Co*., (unilateral change to scheduling violated Section 8(a)(5) even though it affected only one unit employee). Similarly, even a slight change in the amount of time worked per day can constitute a material change. See *Pepsi-Cola Bottling Company of Fayetteville, Inc.*, 330 NLRB 134 (2000) (schedule change was a material and significant change because it resulted in route salesmen commencing their workdays 15 minutes earlier than they had before).

The Respondent's alteration of work schedules constituted a material, substantial and significant change in the terms and conditions of employment of the Albany units and, as such, was a mandatory subject for the purposes of collective bargaining. As such, the Respondent's failure to afford the Union an opportunity to bargain over the scheduling change violated 8(a)(5) and (1) of the Act.

II. UNILATERAL CREATION OF EXCEPTIONS IN THE ALBANY UNIT AND DIRECT DEALING WITH A BARGAINING UNIT MEMBER

The General Counsel and Charging Party further allege that the Respondent, without prior notice to the Union or affording it an opportunity to bargain, also violated Section 8(a)(5) by not informing the Union of the change in schedule. Further, they allege the Respondent dealt directly with unit Michael Sopok, a unit employee, on September 22, creating an exception to the mandatory six-day workweek policy for all service and installation technicians in the Albany Unit. The Respondent denies the allegations, contends the exception granted to Sopok stemmed from a unique situation that he chose to raise directly with the Respondent, and was not intended to undermine the Union.

Direct dealing involves interaction with employees that bypasses the union about a mandatory subject of bargaining. *Mercy Health Partners*, 358 NLRB No. 69 (June 26, 2012), citing *Champion International Corp.*, 339 NLRB 672, 673 (2003). The standard for direct dealing was laid out in *Permanente Medical Group*, 332 NLRB 1143, 1144 (2000), as "[a]n employer engages in unlawful direct dealing when (1) the employer communicates directly with union represented employees; (2) the discussion is for the purpose of establishing or changing wages, hours, and terms and conditions of employment or undercutting the union's role in bargaining; and (3) such communication is made to the exclusion of the union." Id. at 1144.

The Respondent argues that it did not engage in direct dealing with Sopok because there was neither a promise of a benefit nor issuance of a threat. It further argues that the prohibition of such interaction with employees would mean that it would have to negotiate with the Union over any trivial changes in shifts, hours or time off.

I disagree with the Respondent's belief that prohibiting interactions between management and employees about work schedules would lead to mandatory negotiations with the Union over

any change in shifts, hours or time off. Sopok's request stemmed from a unilateral and unexpected change made by the Respondent that deviated substantially from the bargaining agreement that unit members reasonably relied upon. It affected the entire bargaining unit. I would decline to extend this interpretation to situations involving shift changes or alterations occurring during the course of a bargaining agreement resulting from the normal course of business, and not stemming from any unilateral and unexpected modification of the terms and conditions of the bargaining agreement.

The Respondent's direct dealing with Sopok, a unit bargaining unit employee, in arranging an exception for him from the six-day workweek schedule, bypassed the unit representative and undermined the union's role in bargaining. By granting a unit employee member an exception that could plausibly be interpreted as favorable treatment, the Respondent effectively undermined confidence in the Union by the bargaining group. In doing so, the Respondent violated Section 8(a)(5) and (1) of the Act by failing to meet and bargain exclusively with the bargaining representative of its employees before implementing a change to the terms and conditions of unit employees. See *Allied—Signal,* 307 NLRB 752, 753 (1992); *Northwest Graphics Inc. and Local 6-505-M*, 343 NLRB 84,176 (2004).

III. DELAY IN PROVIDING REQUESTED INFORMATION TO THE UNION RELATING TO THE SIX-DAY WORKWEEK

The General Counsel and Charging Party also allege that the Respondent failed to provide requested information in a timely manner. The Respondent contends that it met its obligation to supply information to the Union by providing the requested information or asserting legitimate objections to information requests deemed vague or ambiguous.

Under Section 8(d) of the Act, the Respondent has an obligation to provide the Union with requested information that is relevant and necessary to the Union's performance of its duties as collective-bargaining representative, including deciding whether to process grievances. *NLRB v. Acme Industrial Co.,* 385 U.S. 432, 435-436 (1967); *Centura Health St. Mary-Corwin Medical Ctr.*, 360 NLRB No. 82, slip op. at 1 (2014). The applicable standard is whether there exists "a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees' exclusive bargaining representative." See *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979) ("the duty to bargain collectively, imposed by Section 8(a) of the NLRA, includes a duty to provide relevant information requested by the union for the proper performance of its duty as the employees' bargaining representative").

In determining whether the requested information is or was probably relevant to the union's role, the Board has typically applied a liberal discovery-type standard. *Brazos Electric Power Cooperative*, 241 NLRB 1016(1979). When information sought concerns matters outside the bargaining unit, the union must establish the relevance of that information by making a special demonstration of relevance based on the logical foundation and a factual basis for the information. *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 258 (1994). The Board need only find a probability that the requested information is relevant and would be useful to the union in carrying out its responsibilities. *Reiss Viking*, 312 NLRB 622, 625 (1993), citing *Postal Service*, 310 NLRB 391, 391-92 (1993).

Each of the Union's requests explained in detail how the information was going to be used in relation to the dispute. Neither the October 13th nor December 16th emails provided sufficient information relative to what was being sought by the Union. Stewart's response on October 13th proffered justifications for the change and provided a data set that seemed to answer parts of Costello's questions but it does not, as Stewart says "address all of the concerns raised" in the September 19th request. The December 16th communication appears to be an internally directed marketing document, apparently used by management to explain to their employees why they were to work longer hours. It is also the only document provided. The Respondent provided information in a haphazard manner over a three month period.

The Respondent notes than the time to respond is not delineated in the Act and the precedent is largely fact driven, differs on a case by case basis, and is based on the totality of circumstances surrounding the event. *Allegheny Power,* 339 NLRB 585,587 (2003). The Respondent's delay in providing relevant information sought by the Union, when evaluated in conjunction with its unlawful unilateral change to work schedules, along with its direct dealing with a unit employee in carving out exceptions to its unlawful action, was unreasonable.

The Respondent also concedes that the information could have been forwarded to the Union earlier than December, but denies that the delayed production was unreasonable, driven by animus or resulted in harm to the Union. The Respondent also cites several decisions in which delays ranging from several months to almost a year were found neither unreasonable nor prejudicial to the Union. *Union Carbide Co*., 275 NLRB 197, 201 (1985); see also *Dallas & Mavis Forwarding Co*., 291 NLRB 980 (1988). These arguments lack merit. The Union became aware of the change in schedule only after the decision was made and announced to employees. When the Union attempted to respond, the Respondent was slow to act and provided insufficient information. Stewart's belated and incomplete reply to the Union's request for relevant information as it rolled out the unlawful change to unit employees' work schedules, was prejudicial and hampered the Union's ability to enforce the contract.

Finally, the Respondent asserted that some of the requests were vague or non-relevant without providing clarification and proceeded to provide only information that obliquely responded to the detailed requests made by the union. When an employer believes an information request is vague, however, it has the responsibility to request clarification. See *Keauhou Beach Hotel*, 298 NLRB 702,702 (1990) (employer may not simply refuse to comply with a request it deems overly broad, onerous or non-relevant). See also *Hospital Episcopal San Lucas*, 319 NLRB 54, 57 (1995) (employer is required to notify the Union of its objections to each request and as needed, ask for clarification).

Under the circumstances, the Respondent's repeated failure to meet its statutory obligation to timely provide the requested information violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. ADT, LLC d/b/a ADT Security Services is an employer within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally and without the consent of the Union when it:

(a) Changed the terms and conditions of employment in the Albany unit by imposing a six-day workweek for service and installation technicians in that location.

(b) Changed the terms and conditions of employment in the Syracuse unit by imposing a bi-weekly six-day workweek for the service technicians in that location.

(c) Refused to bargain with the Union by making changes to employees' terms and conditions of employment by unilaterally imposing a bi-weekly six-day workweek for the installation technicians in the Syracuse Unit without first giving the Union notice and an opportunity to bargain.

(d) Unilaterally created exceptions to the workweek policy for the Albany Unit. And engaged in direct dealing with employees regarding mandatory terms and conditions of employment.

(e) Delayed in providing information to the Union necessary and relevant to its role as the employees' bargaining representative.

4. The aforementioned unfair labor practices by the affected commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[14]

[14] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, ADT LLC d/b/a ADT Security Services, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unilaterally and without the consent of the Union imposing a six-day workweek for service and installation technicians in the Albany Unit, or otherwise changing employees' terms and conditions of employment as set forth in the Albany collective-bargaining agreement.

(b) Unilaterally and without the consent of the Union imposing a bi-weekly six-day workweek for the service technicians in the Syracuse Unit, or otherwise changing employees' terms and conditions of employment as set forth in the Syracuse collective-bargaining agreement.

(c) Refusing to bargain with the Union by making changes to employees' terms and conditions of employment by unilaterally imposing a bi-weekly six-day workweek for the installation technicians in the Syracuse Unit without first giving the Union notice and an opportunity to bargain.

(d) Unilaterally creating exceptions to the workweek policy for the Albany Unit.

(e) Engaging in direct dealing with employees regarding mandatory terms and conditions of employment.

(f) Delaying in providing information to the Union that is necessary and relevant to its role as the employees' bargaining representative.

(g) Refusing to provide information to the Union that is necessary and relevant to its role as the employees' bargaining representative.

(h) In any like or related manner interfering with, restraining or coercing Respondent's employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) At the request of the Union, rescind the unlawful unilateral changes to the workweek for the Albany Unit and Syracuse Unit.

(b) Provide the Union with the information it requested on September 19 and October 24 that it has not already provided.

(c) Within 14 days after service by the Region, post at its facilities in Albany and Syracuse, New York copies of the attached notice marked "Appendix."[15] Copies of the notice, on forms provided by

[15] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent since September 22, 2016.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn statement of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C. August 4, 2017

Michael A. Rosas
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT unilaterally make changes to unit work schedules without consulting the bargaining representatives of the unit.

WE WILL NOT unilaterally bargain, negotiate or directly deal with individual members of the bargaining unit about the terms and conditions of employment without notifying and including the bargaining unit representatives.

WE WILL NOT fail or refuse or unreasonably delay in providing requested information to bargaining unit representatives when the information is necessary for the representatives to fulfill their duty to unit members.

WE WILL notify you that the work-week directive has been rescinded.

WE WILL notify you that the mandatory six-day workweek order from our September 7, 2016 memorandum has been rescinded.

ADT, LLC d/b/a ADT SECURITY SERVICES
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Niagara Center Building, 130 S. Elmwood Avenue, Suite 630, Buffalo, NY 14202-2465
(716) 551-4931, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/03-CA-184936 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (518) 419-6699.